THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before John Wine, Chair
Cynthia Claus
Brian J. Moline

In the Matter of the Application of Sprint Communications Company, L.P., United Telephone Company Kansas, Telephone Company of Eastern Kansas, United Telephone Company of South Kansas, and United Telephone Company of Southeastern Kansas for the to Open a Generic Proceeding on Southwestern Telephone Company's Rates for Interconnection, Unbundled Elements, and Termination, and Resale.) Docket No. 97-SCCC-149-GIT

ORDER REGARDING NON-RECURRINd CHARGES FOR UNBUNDLED NETWORK ELEMENTS

The matter comes on before the State Corporation Commission of the State of ("Commission") for determination of non-recurring charges for unbundled network elements. After examining its and records, and being duly advised in the premises, the Commission finds and concludes:

I.

SUMMARY OF PROCEEDING WITH RESPECT TO NON-RECURRING COSTS

1. On February 19, 1999, the Commission issued its Final Order SWBT's [Southwestern Bell Telephone Company's] Prices for Interconnection and [Unbundled Network Elements] (referred to hereafter as 19, 1999 Order"). The February 19, 1999 Order established general parameters for recurring and non-recurring elements that were intended to spur competition in local telephone markets giving new entrants unbundled access to SWBT's existing network. 19, 1999 Order at ¶¶ 73-78. The recurring cost elements

were specifically priced in Attachment A of the February 19, 1999 Order.[1] The non-recurring cost elements were specifically priced in Attachment B to that order. The prices for the non-recurring cost elements, as set forth in Attachment B, were found to be in the range provided by the cost studies filed in this docket and found to reflect the concerns or issues specifically related to the provision of service in SWBT's Kansas territories. February 19, 1999 Order at ¶¶ 90-96. The Commission also decided to rely upon prices established by the Texas and Missouri Public Service Commissions to assess the reasonableness of the prices established by the Commission. Prices should be similar for similarly defined elements, especially for those cost elements that use common resources with the five SWBT states: Texas, Missouri, Arkansas, Oklahoma and Kansas. February 19, 1999 Order at ¶¶ 73 and 95. The Commission granted reconsideration for the purpose of allowing additional time to consider the arguments raised by the parties. The Commission specifically advised the parties that the Commission may require additional cost study information. Order on Reconsideration, dated April 6, 1999.

2. On September 17, 1999, the Commission was persuaded that additional cost study information would be useful in further refining the prices for non-recurring cost elements and issued its Order on Reconsideration ("Reconsideration Order"). The Reconsideration Order set out several submission requirements and comment periods on designated non-recurring cost issues. The Commission specifically directed the parties to re-submit the non-recurring cost studies for provisioning of unbundled network elements based upon certain underlying determinations. The re-submitted studies were required to apply a forward-looking cost methodology, known as Total

---

1/The Commission reviewed the recurring cost elements on a separate track within this docket: This order deals only with the non-recurring cost elements.

Element Long Run Incremental Costs ("TELRIC"). The Federal Communication Commission ("FCC") adopted this methodology to carry out the purposes of the Federal Telecommunication Act of 1996. The Commission is obligated to follow the FCC methodology for pricing unbundled network elements because the FCC has chosen to exercise its statutory authority to prescribe a cost methodology for state commissions. *AT&T Corp. v. Iowa Utilities Board, 525* U.S. 366, 376-385 (1999). TELRIC is not a specific formula but a framework of principles that govern pricing determinations. While TELRIC consists of methodological principles for setting prices, state commissions retain flexibility to consider local technological, environmental, regulatory and economic conditions.

3. On November 9, 1999, Southwestern Bell Telephone Company ("SWBT") re-submitted its non-recurring cost studies for review and comment by other parties. AT&T Communications of the Southwest, Inc. ("AT&T") also re-submitted its cost studies on that date, in which AT&T attempted to rerun SWBT's original cost studies incorporating the Commission's ordered changes. The Commission received comments from Sprint Corporation ("Sprint"), AT&T, Commission Staff ("Staff"), and Birch Telecom of Kansas, Inc. ("Birch Telecom"), all filed on December 17, 1999. AT&T's comments included a second set of rerun SWBT cost studies, to which AT&T had made various modifications. SWBT filed responsive comments to the cost study runs provided by AT&T. On January 10, 2000, AT&T and SWBT filed further responsive comments. On January 10, 2000, DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") filed a motion to intervene in this proceeding, which was granted by Order dated January 27, 2000. Covad commented on the need for a separate docket to focus entirely on the digital subscriber line service ("DSL") elements and the deployment of DSL technology.

4. Staff's comments accurately described the flaws contained within SWBT's and AT&T's cost studies. Neither SWBT's nor AT&T's cost studies comply with the Commission's Reconsideration Order. As the record exists now, there is not an adequate basis for the Commission to accept alternative prices proposed by either AT&T or SWBT. The Commission has considered continuing this docket until all unbundled network elements needed by Competitive Local Exchange Carriers ("CLECs") are available with prices supported by accurate and approved costs. However, the Commission is very concerned about the length of time this proceeding has been pending, and prices need to be determined. Furthermore, in Docket No. 97-SWBT-41 1-GIT, the Commission agreed to support SWBT's application before the FCC for InterLATA authority under Section 271 of the Federal Telecommunications Act. The approval was premised, in part, on the expectation that final permanent prices for UNEs, including the non-recurring charge component, would be in place and available to CLECs. The Commission is committed to issuing orders that encourage the development of local exchange competition and the deployment of the latest technological advancements in Kansas. The Commission believes that the best way to execute this commitment is to complete this phase of the docket and issue an order setting prices for the non-recurring cost elements despite the failure of SWBT and AT&T to compile cost studies in accordance with the Commission directives. The Commission will utilize the information previously received in this matter, apply its best judgment and determine the prices for non-recurring cost elements now. Accordingly, the prices for UNE elements and services listed in the attached exhibit, Revised Attachment B, are approved.

II.

COMMENTS

5. Sprint's comments generally address proposed loop conditioning charges for advanced services. Sprint offers information and argument on that topic, based on its recent experience in its arbitration hearing in Docket No. 99-SCCC-710-ARB which included xDSL issues. Sprint notes in its comments that these same pricing issues will be addressed in the Covad/SWBT arbitration pending before the Commission.[2] Furthermore, Sprint attached the Arbitrator's ruling for the Texas Public Service Commission ("TPUC") in the consolidated arbitration proceedings between SWBT and Rhythms Link and between SWBT and Covad regarding loop conditioning charges. TPUC Docket Nos. 20226 and 20272 hereinafter referred to as the "Covad Texas Arbitration." Sprint points out that the flaws it identified in SWBT's conditioning charge calculations in its arbitration case before the Commission were echoed in the TPUC Arbitrator's decision. Sprint states that SWBT overestimates costs consistently by employing worst case scenario assumptions, along with deriving work function estimates that do not anticipate that SWBT will act as an efficient provider. According to Sprint, SWBT studies assume that every "interferor" will be removed in a manhole, which is the most time consuming and costly place for removal. This does not account for the fact that some removal will take place on aerial and buried cable, which is much less time consuming and costly. According to Sprint, SWBT assumes there is an engineering charge for each instance in which a load coil, bridge tap, or repeater (interferors) is removed, even if they are on the same line. Sprint states it is unrealistic, and more importantly, inefficient to only

---

2/The xDSL issues have been addressed now by the Commission and prices set on an inter& basis in Docket No. OO-GIMT-032-GIT.

condition one loop at a time. Also, according to Sprint, SWBT designates "binder groups" (groups of loops) for ADSL use. SWBT assumes it will condition one loop, and not the entire bundle, when the service is provided. Sprint states it found it preposterous, as did the Arbitrator in the Covad Texas Arbitration, that an efficient provider would undergo the extremely time-consuming effort it takes to condition a loop in a manhole, yet condition only one loop at a time. Sprint concludes that SWBT's proposed non-recurring loop conditioning charges should be rejected and that SWBT should be ordered to refile its cost studies to reflect the forward-looking costs of an efficient telecommunication provider. Sprint recommends that the Commission adopt, on an interim basis, the prices determined by the TPUC Arbitrator in the Covad Texas Arbitration and that the Commission withhold the final determination until after SWBT refiles its cost studies and after the Sprint/SWBT arbitration proceeding pending before the Commission is completed. Sprint's Comments at 2-5

6. Birch Telecom's comments reflect the concerns of the CLECs. Birch Telecom notes that it has a significant stake in the status of local competition in Kansas because it has made an aggressive attempt to enter the local markets in Kansas. Birch Telecom states its marketing efforts have been successful, but as more customers are provided service, Birch Telecom encounters more operational problems with SWBT. Birch Telecom continues to question whether SWBT has sufficient incentive to introduce changes to the Operational Support Systems ("OSS") that will minimize the risk of errors, delay, and extra costs inherent to manual processing. Birch Telecom outlines the record support for the Commission's previous decisions in favor of the requirement to use forward-looking TELRIC-based principles for pricing of non-recurring charges, which, among other things, in a forward-looking environment would require the use of mechanized systems. Birch

Telecom states it has launched its own "integrated, sophisticated back office" systems, ultimately expected to cost more than $20 million. According to Birch Telecom, it is doing what it can to use mechanized systems to ensure that its customers will not face the problems that are inherent in manual processes. The integrated system will allow Birch Telecom to provide a single bill for all services (local, long distance, Internet, and equipment), and will also allow it to provide faster provisioning and respond more rapidly to trouble reports. Birch Telecom states this is being done for the customer's benefit, so that customer service representatives have a wealth of information at their fingertips, the provisioning process is short and error-free, and newer, better services may be rapidly introduced. Also, Birch Telecom has sought to use the electronic means SWBT has made available to permit it to enter the market in an economy that is powered by the speed of the Internet. Birch Telcom believes that to compete effectively, a company must consider the speed at which the country is conducting commerce and complains that "SWBT has provided cost studies that include costs representing embedded manual processes and procedures. . . The Commission should not permit this blatant disregard of its instructions to continue." Birch Telecom Comments at 3. According to Birch Telecom, "SWBT's suggestion that companies continue to submit orders by mail is not only irrelevant, it is also incredible." Birch Telecom Comments at 4. What is troublesome to Birch Telecom:

> . . . is the seemingly constant need to rehash, reaffirm, and repeat the Commission's directives to SWBT. The record is replete with examples of SWBT intransigence. Simply put, SWBT repeatedly refuses to comply with Commission Orders, and the competitive market suffers from SWBT's successful efforts at continued delay.

Birch Telecom Comments at 5.

7. AT&T's comments critically review SWBT's non-recurring cost studies in light of the Commission's Reconsideration Order that adopted a five percent fall out factor for electronic processing of service orders and that assumed a 100 percent percent Dedicated Inside Plant ("DIP") factor and 80 percent Dedicated Outside Plant ("DOP") factor. AT&T provides an extensive recapitulation of the record supporting the Commission's earlier decision on the 5 percent fall out rate for electronic processing of service orders. According to AT&T, there is no reason for the Commission to now reverse itself and accept non-recurring cost inputs which reflect SWBT's embedded service order processes and procedures. AT&T states that SWBT has treated the Commission's Reconsideration Order as optional, and filed inputs proposed in its Petition for Reconsideration, rather than as determined in the Commission's Reconsideration Order. AT&T points out that SWBT's cost study reflected the 5 percent fall out factor in only one study, which was a new study and notes that the rest of SWBT's cost studies, with few exceptions, assume 100 percent fall out rather than 5 percent fall out factor required by the Commission for the re-submission of cost studies. AT&T cites a leading telecommunications analyst's report indicating that AT&T is spending several hundred million dollars on OSS systems to have complete flow through from the order in the field to the provisioning and billing records. According to AT&T, the new automated flow through system will also be able to provision capacity for the customer. AT&T notes this change as one example that the Commission's decision to require 100 percent electronic processing of orders is economically sound, in addition to being fully consistent with the Federal Telecommunication Act, the Kansas Telecommunication Act, and FCC Rules and Orders. As a further matter, AT&T states that the 80 percent DOP and 100 percent DIP assumptions are not reflected in SWBT's resubmitted cost studies. According to AT&T, this phase of the proceeding

should be focused on nothing more than conforming SWBT's studies to these requirements, in order to bring the docket to a close, create a degree of certainty for potential new entrants, and hasten the day when Kansans will have a viable choice of local service providers. Finally, AT&T notes that SWBT filed a number of new studies for various elements and services and recommends those studies be considered separately, if at all.

8. In addition, AT&T complains that SWBT failed "to translate its cost studies to a PC format." Order Setting Inputs for Cost Studies ("Inputs Order") dated November 16, 1998 at paragraph 16. According to AT&T, of the 39 studies SWBT filed, only 26 of the electronic versions exactly match the paper copies filed by SWBT. Many of SWBT cqst studies also utilize underlying calculations that are not contained within the electronic files provided by SWBT. AT&T criticizes SWBT studies as disjointed and requiring inordinate amounts of exacting labor to review and analyze. AT&T states that SWBT's failure to comply with the Commission's Order to fully mechanize its studies has greatly hampered AT&T's ability to analyze and rerun the SWBT studies and to present compliant studies. AT&T states that it modified SWBT cost studies to the extent feasible to be compliant with the Commission's orders. AT&T concludes that because of SWBT's failure to comply with the Reconsideration Order, the Commission should adopt AT&T's recommended prices for the non-recurring charges, based upon AT&T's cost studies that incorporate the 10 percent common cost factor agreed to by SWBT and AT&T.

9. SWBT's comments, filed December 17, 1999, review the cost studies performed by AT&T. More importantly, SWBT prayed that the Commission "adopt SWBT's NRC [non-recurring cost] studies for purposes of this docket." SWBT Comments at 14. SWBT states that its non-recurring cost studies are based upon TELRIC principles for the SWBT network.

10. SWBT states in its comments that "AT&T made unwarranted and illogical assumptions and changes to the Commission ordered inputs and SWBT studies which resulted in non-recurring costs that do not reflect reasonable forward looking costs." SWBT Comments at 1. In particular, SWBT states it is "clearly erroneous" to apply the 5 percent fall out factor to every non-recurring cost study. According to SWBT, the Reconsideration Order applies the 5 percent fall out input only for the service order process because the Reconsideration Order only refers to "incoming business orders falling out." Reconsideration Order at paragraph 70. Beyond that, SWBT states "given the fact that in some functions there are no electronic processes in the elements that will be done manually, it is illogical to assume a fallout factor in those studies." SWBT Comments at 2. SWBT states that "AT&T's methodology grossly distorts the NRC, and represents a clear departure from the intent of the Commission's [Reconsideration] Order." SWBT Comments at 2.

11. SWBT continues in its comments by specifically attacking several aspects of the AT&T cost studies:

A. **Unauthorized Change Investigation**–SWBT states it is incorrect to apply the five percent fallout factor to this cost study since it is a "manual investigation that is designed to resolve slamming complaints. It requires a service representative to conduct a manual investigation and then follow up with a Letter of Authorization."

B. **Network Interface Device ("NID")**–SWBT states AT&T incorrectly applied the 80 percent Dedicated Outside Plant factor. "When a CLEC incurs a charge for this work, 100 percent of the expense will be incurred 100 percent of the time. "SWBT intends to recover the cost of this function from CLECs that order this service." SWBT Comments at 3-4.

C. **8db Loop Nonrecurring cost study-SWBT** states that **AT&T** incorrectly applied the fallout factor, and failed to remove all TIRKS costs.

D. **BRI and PRI ("ISDN") Loop Non-recurring cost studies-SWBT** states that **AT&T** incorrectly applied the fallout factor, and the 80 percent DOP factor. BRI and PRI loops are not treated like POTS loops. ISDN is a special service, and SWBT will send a technician to the field 100 percent of the time.

E. **Station Terminating equipment (5db loss conditioning)-SWBT** states that **AT&T** incorrectly applied the fallout factor, and the 80 percent DOP factor. 5db loss conditioning is performed only at the request of the CLEC.

F. **Unbundled Local Switching Features-SWBT** states that **AT&T** incorrectly applied the fallout factor.

G. **Unbundled DS1 Trunk Port**–SWBT states AT&T incorrectly applied the fallout factor.

H. **Direct Inward Dialing-SWBT** states AT&T incorrectly applied the fallout factor. There are no mechanized processes in place, hence the fallout factor does not apply.

I. **Primary Rate Interface Port**–SWBT states AT&T incorrectly applied the fallout factor. There are no mechanized processes in place, hence the fallout factor does not apply.

J. **Maintenance of Service-SWBT** states AT&T incorrectly applied the fallout factor, did not remove all inflation factors, and used incorrect labor rates.

K. **Time and Materials**–SWBT states AT&T did not correctly apply the fallout factor, did not remove all inflation factors, and did not use correct labor rates.

L. **External Rater/Reference (Resellers and Facility Based)-SWBT** states AT&T incorrectly applied the fallout factor and used incorrect labor rates.

M. **Local and IntraLATA Toll Operator Assistance**–SWBT states AT&T incorrectly applied the fallout factor.

N. **Directory Assistance Call Completion-SWBT** states AT&T incorrectly applied the fallout factor.

0. **Local Switching Features-SWBT** agrees with AT&T that the service order portion of the study should be removed. Application of service order will be treated as a new service order. A change order would be applied on subsequent orders. Also, AT&T incorrectly applied the fallout factor.

P. **Unbundled Service Order-AT&T** incorrectly applied the fallout factor. SWBT states it has developed two new service order cost studies–one electronic, the other non-electronic or manual. The non-electronic cost study is based on the competing local exchange carrier submitting the Local Service Request by fax, mail or courier.

12. Finally, SWBT points out that the FCC's "UNE Remand" Order[3] found that it was not necessary to require a local exchange carrier to provide External Rater/Reference, Local and IntraLATA toll operator assistance, or Directory Assistance Call Completion as an unbundled network element. Since the FCC no longer considers these cost elements as necessary for the Incumbent Local Exchange Carrier ("ILEC") to provide, SWBT believes the Commission should direct that these cost elements be removed from master list of unbundled network elements filed with the Commission and that SWBT not be required to price these elements. SWBT Comments at 1 0-13.

13. Staff filed comments on December 17, 1999, which indicated that SWBT filed 46 cost studies, the majority of which were "reruns" of previously submitted studies, as directed by the Commission. However, Staff notes that several additional studies not previously filed with the Commission were submitted. According to Staff, in virtually every cost study where a direct

---

3/Third Report and Order. CC Docket 96-98. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. Released November 5, 1999.

comparison was possible, SWBT's proposed prices are substantially higher than the prices set by the Commission in Attachment B of the February 19, 1999 Order. In another comparison, Staff indicates that the SWBT proposed prices were somewhat lower than the prices set forth in SWBT's originally filed cost studies (with the non-recurring cost associated with 2-wire loops being a notable exception). Staff reviewed both the AT&T and SWBT cost study filings, and found that neither is in "perfect compliance" with the Commission's requirements. Compliance issues identified by Staff include:

A. **Labor costs**–The Commission ordered SWBT to remove Transitional Benefit Obligation ("TBO") costs, sales commission, retail bonuses and award payments from its labor rate calculations. Overtime and premium time charges were to be removed when a separate rate element is proposed for overtime and premium time charges. Finally salary related support asset expenses were to be removed from calculation of the support asset factor. Since the non-recurring cost studies consist almost entirely of labor, it is important to address these issues in determining compliance. Staff states SWBT did remove TBO costs and sales commissions, and that bonuses and awards never were included. But SWBT removed TBO only from the calculation of Kansas support assets, and did not make analogous adjustments when calculating support asset expenses for assets located in Arkansas, Missouri, Oklahoma and Texas, which are included in the cost studies. Staff believes all Commission-ordered support asset adjustments should have been made to the support asset calculations for all five states.

B. **Electronic Ordering-Staff** notes that in spite of direct language in Commission orders, SWBT submitted a cost study based on fully manual processes. SWBT did this in the belief that it should be compensated for additional costs when a CLEC submits an order by fax or telephone. Staff suggested that a more reasonable solution to SWBT's claim would be to impose a modest surcharge, sufficient to recover the cost of having a SWBT clerical employee input the order into the ordering system. From that point forward, the order should be assumed to flow through the ordering and provisioning process like any other order. Furthermore, Staff notes that both studies are new; neither study represents a rerun of the original service order study, as required by the Commission's Reconsideration Order at paragraph 70. SWBT should have rerun its service order study to be consistent with its original filing, modified only to the extent required by the Commission's orders. This is the approach used by AT&T in its filing.

C. **Five Percent Fall Out**–Staff notes that provisioning network elements typically involves multiple stages, with numerous work activities within each stage. During each one of these stages, the potential exists for automated processes to fail, requiring manual intervention. When this occurs, an order is said to "fall out." One of the disputed issues in this proceeding is the level of fall out. SWBT has interpreted the phrase "incoming business orders" contained in paragraph 70 of the Reconsideration Order to limit the application of the 5 percent fall out factor to service order activities. Beyond the electronic service order cost study, SWBT continues to make a variety of assumptions regarding fallout. Using the loop study as an example, SWBT's assumptions equate to a cumulative fallout of 59.3 percent for circuit provisioning center activities. On the other hand, AT&T applied the fall out rate to SWBT's calculated work times, although those times had already been reduced somewhat by SWBT's fallout and probability of occurrence assumptions. This has the effect of understating the fall out rate. According to Staff, both AT&T and SWBT are incorrectly applying the Commission's fall out factor to individual work activities, rather than looking at the net fallout rate for an entire process within a study. When the fallout rate is applied to individual activities, the net result is to create a greater fallout rate for the process as a whole.

D. **TIRKS Expenses**–The Commission has previously ordered that SWBT shall not include costs associated with the TIRKS database in its proposed non-recurring cost element. SWBT only removed TIRKS related expenses from the 8db loop cost element. Staff believes that if an element is provisioned by SWBT in a retail environment without the use of TIRKS, then such expenses should be excluded from the studies filed pursuant to the Commission's Reconsideration Order.

E. **Dedicated Outside Plant ("DOP")**–the Commission required SWBT to assume that outside plant was left in place, or "dedicated," 80 percent of the time. Staff states that SWBT's 8db loop cost studies comply with this requirement, but that other loops, such as BRI, PRI, and 4-wire, use different assumptions. BRI costs are computed using a 5 percent DOP assumption, while PRI and 4-wire are computed using a 0 percent assumption. Staff understands this to be due to the nature of the electrical circuits as designed circuits, conditioned for ISDN use. If a new customer needs a BRI loop for ISDN service, "the odds are slim that a fully conditioned BRI loop will be available ready to go without requiring outside plant work." Because ISDN is so specialized, and because so few customers use this service, a much lower DOP frequency is appropriate, in Staff's opinion. Staff notes that the Reconsideration Order is not specific whether the 80 percent DOP factor should apply to all loops, or just to 8db loops. Staff states that the appropriate resolution to this issue depends at least in part on how and when the outside plant related non-recurring charges shall apply. Staff believes such charges should not apply when a customer is simply changing carriers. If a customer receiving ISDN service from SWBT switches to a competitive local exchange carrier, that in itself would not trigger outside plant work, and therefore non-recurring loop installation charges should not apply. This would be so even if the ISDN service was provided using the CLEC's switch rather than SWBT's switch.

F. **Dedicated Inside Plant ("DIP")**–The Commission required the use of a 100 percent DIP factor in calculating non-recurring costs. According to Staff, it "could find no evidence that SWBT complied with this provision of the Order on Reconsideration. Furthermore, SWBT filed revised port studies which appear to completely ignore the potential efficiencies associated with DIP. . . . Given a 100 percent DIP assumption, there does not appear to be any need for a port study of the type filed by SWBT." Staff Comments at 17.

G. **Switch Features-Staff** notes that this non-recurring cost study does not employ the 5 percent fall out rate, as would be required to be in compliance with the Commission's Reconsideration Order.

14. On January 10, 2000, AT&T filed responsive comments, stating that its cost studies filed with its December 17, 1999 comments supercede the cost studies it filed on November 9, 1999. AT&T also suggests that the comparison of the two sets of non-TELRIC prices provided by Staff is not useful in the process of determining lawful TELRIC prices because the Commission has adopted the TELRIC methodology in its previous orders. According to AT&T, the Inputs Order issued November 16, 1998 and the Reconsideration Order issued on September 17, 1999 contain the proper TELRIC principles and guidance that will result with non-recurring cost rates which comply with the Telecommunications Act of 1996 and the FCC's rules. AT&T concurs with Staff's recommended adjustment to support asset costs to span the five SWBT states. AT&T states that Staff's suggestion for a modest surcharge to reflect the cost of a SWBT clerical employee inputting a faxed or mailed service order into SWBT's OSS, and an assumption that the order flows through the ordering and provisioning process, is a sound one that should be adopted. AT&T agrees with Staff's comments that the application of the fallout rate to each work activity by both SWBT and AT&T in their cost studies was not consistent with the Reconsideration Order, and would overstate non-recurring cost rates. AT&T acknowledges that TIRKS costs would have been removed from its cost studies but for an oversight, as pointed out by Staff.

15. AT&T supports Staff's position that non-recurring cost charges should not apply to situations where a customer is simply changing carriers. This would be true whether a customer is using basic 8 db local service or a more complex service. AT&T urges the Commission to adopt this

position and make it explicit in findings. AT&T also supports Staff's position that port costs should be recovered in recurring rates.

16. AT&T disagrees with Staff that it is reasonable to assume a much lower DOP frequency in the context of BRI loops. AT&T states that the 80 percent DOP factor is an average factor for all outside plant, and that if a lower factor is to be used for non-basic service-related outside plant, then the factor for basic service-related outside plant should be increased. AT&T referenced its previous testimony and comments that 100 percent DOP should be employed in a true TELRIC study. According to AT&T, this is so because it is more efficient in the long run to put outside plant in place and leave it in place, rather than continuously connecting, disconnecting, and reconnecting outside plant.

17. AT&T challenges SWBT's application of a 5 percent fall out rate to the unauthorized change investigation as illogical. AT&T states that the process is not necessarily manual and that a slamming complaint, including any follow-up contacts, can be forwarded to the CLEC electronically. Only a small percentage of the cases (i.e., 5 percent) should require actual investigative time of SWBT investigators. If SWBT chooses to make direct contact with the customer, thereby availing itself of an opportunity to demonstrate its goodwill and solidify its relationship with the customer, that is a strategic choice made by SWBT. SWBT should not be allowed to charge the non-recurring cost for its costs resulting from that strategic business decision.

18. AT&T accepts SWBT's stated policy that the Network Interface Device ("NID") non-recurring cost charge will only be applied when a CLEC requests SWBT to disconnect a drop line from a NID. AT&T states this is more equitable than spreading the cost over all loops.

19. AT&T complains that incorrectly modeling ISDN/BRI loops as designed circuits often adds unnecessary conditioning equipment and testing systems. This results in the non-recurring costs becoming much more labor intensive than non-designed services, which in turn results in overstated non-recurring costs due to processes, work groups, and systems at work centers usually reserved for designed circuits being unnecessarily triggered. AT&T states its understanding is that the 80 percent DOP factor is an average that applies to all outside plant. If specific elements are going to assume a lower DOP factor, then the basic 8 db and BRI loops should assume a much higher DOP factor, such as the 100 percent originally proposed by AT&T.

20. On February 2, 2000, AT&T filed a Notice of Recent Decision of the United States District Court for the District of Delaware, on consolidated appeals of the Delaware Public Service Commission's orders entitled *BellAtlantic-Delaware, Inc. v. McMahon and AT&T Communications of Delaware, Inc. v. Bell Atlantic-Delaware, Inc.*, 80 F.Supp. 218 (D.Del. 2000). The court reviewed the Delaware Public Service Commission's decision to reject an incumbent local exchange carrier's Statement of Generally Available Terms ("SGAT") but approve an interconnection agreement between the same incumbent local exchange carrier and AT&T Communications of Delaware, Inc. The *court, inter alia*, addresses non-recurring charges for unbundled network elements and found that:

> All the parties agree that the [FCC's] Local Competition Order required the Commission to set these charges according to the forward-looking costing principles of TELRIC. The NRC charges, then, must 'be based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration.' *See* 47 C.F.R. Section 51.505 (b)(1). The Hearing Examiner's analysis, which the Commission adopted, did not address this regulatory standard. Instead, their analysis focused entirely on the reasonableness of the future mechanization of

> Bell's current manual service order processing system. . . . The mechanization of Bell's current internal service order processes is irrelevant to the legal standard for determining network element costs.

Id. at 250-51. The court remanded the non-recurring cost issues to the Delaware Public Service Commission for additional hearings consistent with the TELRIC rules and regulations of the FCC. AT&T states that this federal court decision supports this Commission's previous decisions and urges the Commission to continue requiring 100 percent DIP factor, electronic flow through of orders through provisioning and billing, and limited (e.g., 5 percent) fall out for SWBT's non-recurring cost studies.[4]

21. On January 10, 2000, SWBT filed reply comments. SWBT states it interprets the Reconsideration Order to limit the application of the 5 percent fall out to the service order processing, making specific reference to the receipt of a service order from a CLEC. SWBT states the FCC recently recognized during the testing of Bell Atlantic's Operational Support System ("OSS") for "Section 271" InterLATA authorization purposes that extremely low fallout percentages are unrealistic. SWBT cites an Ex Parte submission by the New York Public Service Commission showing a fall out rate of 39.6 percent of CLEC orders submitted to Bell Atlantic, and further cites paragraphs 161-177 of the FCC's Order No. 99-295, regarding authorization of Bell Atlantic to provide interLATA services as additional authority supporting its position. SWBT disputes that it will be or should be able to provision services electronically 95 percent of the time. SWBT indicates that its cost studies do not include or contemplate the degree of sophistication and mechanization contemplated by AT&T and Birch Telecom. Nor did SWBT's recurring cost studies for its OSS

4/The Commission recognizes that certain TELRIC principles promulgated by the FCC were litigated before the United States Court of Appeals, 8" Circuit, and a writ of certiorari of the 8th Circuit Court's ruling is being considered by the United States Supreme Court.

include the additional investment as indicated by both AT&T and Birch Telecom. SWBT submits it followed the Commission's directions and changed those inputs specified to be changed in its refiled cost studies. Since SWBT's cost studies did not contemplate a 100 percent electronic provisioning system, SWBT concludes that the five percent fallout factor applied only to the service order process. According to SWBT, a probability factor should be used to determine how frequently manual processes will be required, but AT&T went further and attempted to apply a fallout percentage to wholly manual functions. SWBT cites the example of the NID disconnect as why this position is ludicrous. SWBT states that while a forward looking assumption may be called for under TELRIC, this approach must be tempered with reality.

22. SWBT states that it modified its electronic ordering cost study for the five percent fallout factor and revised the manual service order processing cost study to reflect the Commission-ordered inputs. SWBT states that CLECs should not be able to transmit service orders manually at a price equivalent to one transmitted electronically. SWBT does not agree that Staff's proposed "modest surcharge" allows SWBT to recover its costs, as required by the Federal Telecommunications Act of 1996.

23. SWBT notes that AT&T's comments were based upon the assumption of 100 percent DIP but that Staff recommended that DIP factor should not be assumed. SWBT followed Staff's recommendation and did not consider DIP in its rerun non-recurring cost studies. According to SWBT, a 100 percent DIP assumption means that the network element of the loop is always cross-connected to the switching port. If 100 percent DIP is assumed, there would be no non-recurring charge for the port. SWBT's comments make clear that it considers a 100 percent DIP assumption to be problematic from its standpoint because a 100 percent DIP factor incorporates the assumption

that there is never an unbundled port ordered separately from an unbundled loop. This is contrary to the Federal Telecommunications Act of 1996 which allows CLECS to purchase individual elements. SWBT also believes that a 100 percent DIP factor requires another assumption that when a loop is installed, it is automatically cross-connected or terminated to a port. SWBT states this would increase switching investment either because SWBT would need to keep spare capacity for the circumstance when cable is laid in advance of service (i.e., a new housing development), or additional capacity is purchased at the time the newly built lines are connected.

24. SWBT disagrees with Staff's recommendation that non-recurring cost charges only apply if new service is ordered or if there is a new customer. SWBT admits dispatch is not always required, but that this is accounted for in the probability of occurrence factor included in the cost study. A similar point pertains to AT&T's suggestion that its studies reflect 20 percent of service orders will require sending a truck (and technician) to work the order.

25. According to SWBT, it only removed the TBO expenses associated with Kansas expenses and not the TBO cost for the other four states' portion of support assets because the Commission's orders did not address whether it should remove TBO costs associated with the other four states. Moreover, SWBT complains that converting its non-recurring cost studies to PC format would have required SWBT to perform new and different cost studies, not rerun previous studies.

26. SWBT responds to Sprint's and Birch Telecom's comments regarding costs of conditioning loops to provide DSL service. According to SWBT, the TPUC has not adopted the Arbitrator's recommendation, which Sprint and Birch Telecom have urged this Commission to adopt. Also, SWBT contends that the prices proposed by Sprint are not based upon cost studies using SWBT's methodology and the Commission-ordered inputs and therefore should be ignored

as not in compliance with the Commission's orders. SWBT challenges Sprint's claims that SWBT's cost studies do not take account of the efficiencies of performing conditioning outside of manholes. SWBT asserts its estimates were conservative, while Sprint did not provide any support for its estimates. SWBT states it is not always desirable to remove all the interferors for an entire binder group in all cases, as suggested by Sprint. Because this may decrease the quality of Plain Old Telephone Service ("POTS") service, SWBT contends it should be allowed the option of conditioning an entire binder group when it would be efficient.

27. SWBT's Attachment A to its reply comments responds to individual aspects of AT&T's cost studies, which were filed in December 17, 1999. SWBT generally criticizes: (i) AT&T's application of the five percent fall out factor to non-service order activities and to activities that had already adjusted by "probability of occurrence" which equates to fall out; (ii) AT&T's application of the 80 percent DOP factor; (iii) AT&T's application of the wrong labor rates; and (iv) AT&T's application of the five percent fall out factor to the manual service order processing cost study.

III.

Discussion

28. The Commission notes that SWBT's cost studies filed electronically in many instances do not match the paper copy filed with the Commission. Many of the studies utilize calculations not contained within the electronic files provided. SWBT cost studies are disjointed and require inordinate amounts of labor to review and analyze. The Commission granted reconsideration to allow SWBT and AT&T the opportunity to provide additional information so that the Commission would have access to accurate information based upon the pricing parameters of the Commission's